



STEWART, MITTLEMAN, HEGGIE & HENRY L.L.C.

ATTORNEYS AT LAW

July 23, 2007

The Honorable Dennis N. Smith  
St. Louis County Courthouse, Division 40  
7900 Carondelet Avenue  
St. Louis, Missouri 63105

Ms. Lori J. Levine  
Attorney at Law  
Carson & Coil, P.C.  
515 East High Street  
Jefferson City, Missouri 65102

**Re: Pro Se Commission / Michael Downey comments**

Dear Dennis & Lori:

On July 16<sup>th</sup>, I convened a telephone conference meeting of the subcommittee for Limited Scope Representation. Participating in the meeting were Dick Halliburton, Kathleen Bird, Lou DeFeo, Bob Stoeckl and myself. During the course of this conference call, we reviewed the Memorandum from Michael P. Downey dated May 18, 2007. Following is our subcommittee's Report and Recommendations.

First with regard to his three general comments, we reviewed these. In his third comment, he expresses a concern about use of the limited representation. Our committee has considered this and, I believe it is the commission's position, that limited scope representation is not limited merely to those without adequate financial means. This is rather to make available to practitioners the ability to more safely deliver limited representation. We considered his discussion, but find that it is not something that needs to be considered further. As Kathleen succinctly puts it, "It is not the intent that proposals for rule changes to support limited scope representation in any way alter existing state law with regards to the practice of law by corporations. No clarification in court rules is deemed necessary in view of the existing statutes addressing this matter."

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With regard to his proposed language change that the first sentence of our proposed Rule 4-1.8(a) read, "A lawyer may limit the scope of representation if the client gives informed consent in a writing sign by the client to the essential terms of the representation and the lawyer's limited rule". We recommend that that change be adopted by the commission to bring this into form with the new language regarding informed consent.

With regard to his next comment concerning possibly eliminating the written agreement for certain types of limited representation, we do not recommend this suggestion. We believe that the commission has already discussed this and decided that it is important that there be a written agreement for limited representation.

We agree that the language in paragraph 5 of the comment to the amended rule not be revised. Finally with his last comment regarding Rules 4-4.2 and 4-4.3, the subcommittee suggests that this is already taken care of in the existing language and that no further or additional language need be added.

Concerning Mr. Downey's comment to proposed Rule 41.08, the subcommittee discussed this and we believe that our current rule does not change the law. However, to avoid any question to this effect, we propose the following additional comment language that has been drafted by Kathleen, "It is not the intent that proposals for rule changes to support limited scope representation in any way alter existing state law with regards to the practice of law by corporations."

As to the proposed Rule 43.01, we have considered Mr. Downey's comment and believe that the language can be revised to better clarify the commission's position. Lou DeFeo has drafted a new, which our subcommittee recommends be adopted. The new language drafted by Lou is attached and accompanies this letter.

With regard to Mr. Downey's comments on Rule 55.03, first, we note that our proposed rule has been changed to include "shall" rather than "may" and therefore, no further change is needed.

As to his concerns about when there is "significant assistance", the subcommittee has reviewed our existing proposed Rule 55.03 and believe that it is adequate and appropriate and that no further changes need be made.

Concerning his comment as to item B of Rule 55.03, the committee agrees that "if applicable" be in parenthesis.



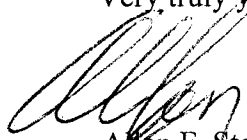
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Concerning his comment in paragraph C regarding Rule 55.03, our committee does not believe this change is really necessary, however, it is our feeling that if this may cause concern, we see no harm in adding his suggested language to the comment to read "nothing in this rule reduces a lawyer's obligation of candor to a tribunal. *See* Mo. S. Ct. R. 4-3.3."

Finally, we note he has no comments on Rule 88.09. Hopefully this input from our subcommittee will be of assistance to the commission. Please let me know if you have any other questions.

Very truly yours,



Allan F. Stewart

AFS/jrc

**Enclosure**



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#### 43.01 SERVICE OF PLEADINGS AND OTHER PAPERS

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- (b) **Service on Attorney.** Whenever under these rules or any of the statutes of this state service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court. When a party is represented by more than one attorney, service may be made upon any such attorney. If an attorney has filed a Notice of Limited Appearance for an otherwise self-represented person, service of papers shall be made on the self-represented person and not on the attorney unless the attorney acting in the scope of limited representation serves the other party or the other party's attorney with a copy of the Notice of Limited Appearance setting forth a time period within which service of papers shall be upon the attorney for the otherwise self-represented party.